

APPENDIX C2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KEURIG, INCORPORATED,

Plaintiff,

v.

HON. DAVID J. KAPPOS,
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office,

Defendant.

CIVIL ACTION NO. 09-2353 (BAH)

ECF

PROTECTED – CONFIDENTIAL

RULE 26(A)(2)(B) DISCLOSURE OF PROFESSOR JOHN STANTON

I. Qualifications

I am a full professor of food marketing and chairman of the food marketing department from 2009 to 2011 at Saint Joseph's University in Philadelphia. I have a Ph.D. in marketing from Syracuse University, and I have been in the food industry for over 35 years. For 10 years (1985 to 1995) I held the first endowed chair in food marketing in the USA, entitled the CJ McNutt chair in food marketing research. My research and consulting has been in both the retail side and the supplier side. Saint Joseph's University has been designated as the National Center for Food Marketing by the USDA and it is the only business school in the country to offer both a BS and an MS degree in Food Marketing.

I teach a variety of food marketing courses in both the BS and MS programs including Food Marketing Strategy, Target Marketing in the Food Industry, Segmentation and Positioning, and Food Marketing Advertising. My MS courses include elements of both retail food marketing and food service marketing.

Besides being an academic, I have held positions in food companies while taking a leave from the University. I have been Vice President of Marketing for Melitta, an international coffee company, and have also been director of research of a Philadelphia advertising agency. I have worked in retail in Germany for Tengelmann. In my position at Melitta Coffee company I was responsible for all marketing activity including advertising, research, product development, etc.

I am on the Board of Directors of Herr's, a regional snack food company, Premio, an Italian meat company, David Michael Flavors, a flavor ingredient company, and Center for Dairy Excellence, a state dairy board.

I have spoken at many major United States food association meetings and conferences as well as to specific retailers including the Food Marketing Institute (FMI), National Grocers Association (NGA), International Mass Retailers Association, National Retail Federation, National Convenience Stores Association, Associated Wholesale Grocers, Private Label Manufacturers Association (PLMA), 7-Eleven International, Supermarket College, Independent Grocers Association, Ohio Grocers Association, Retail Bakers of America, New England Grocery Marketing Association, AC Nielsen (USA), Oklahoma Grocers Association, Wisconsin Grocers Association, Michigan Grocers Association, Affiliated Grocers (Little Rock), Fleming, AG (Pa), AWI (Baton Rouge), Wakefern, SuperFresh, Acme, Kroger, Schnucks, Spartan Foods, Schwans, Colburns, Roche Brothers, Publix, Clemens, and Hy-Vee to name a few.

I have also spoken to many international food groups in the following countries: Russia (Russian Fruit Juice Federation; Russian Grocers Association), Germany (Tengelmann; European Fruit Juice Association; Hypermarket Association), Costa Rica (IICA), Trinidad (Super Pharm), France (Monoprix), Argentina (Argentina Grocery Association), Uruguay (Agribusiness Congress), Brazil (ABRAS; APAS), Thailand (Fresh Food Association; Big C), Chile (Chilean Grocers Association), Colombia (Colombian Grocers Association), New Zealand (New Zealand Food and Beverage Association), Mexico (Mexican Grocers Association) and Ireland (Musgrave; Spar; Food and Beverage Association).

I have been quoted in the media, including interviews on CNN, the Today Show and NBC Nightly News with Tom Brokaw. I have been quoted in most of the food marketing magazines, as well as in the print media, and I have been quoted in *Forbes*, *Fortune*, *Advertising Age*, *Brand Week*, *New York Times*, *The Wall Street Journal*, and many others. I appeared on the History Channel's TV show "Modern Marvels: The Supermarket."

I wrote a monthly column in *Food Processing* for ten years, and my written work regarding food has been published in articles in food trade magazines such as *Supermarket Business*, *Food and Beverage Marketing*, *National Grocer*, *Brand Marketing*, *Grocery Marketing*, *Pasta Journal*, *Food People*, *California Grocer*, *Brand Week* and *Progressive Grocer*.

I have published a number of books including *MORE Stanton on Food Marketing*, *Marketing Strategy: The Rules*, *Precision Target Marketing*, *Stanton on Food Marketing*, *Success Leaves Clues!*, *Delight Me...The Ten Commandments of Customer Service*, *21 Trends in Food Marketing for the 21st Century*, *Marketing Planning in a Total Quality Environment*, *Running a Supermarket Consumer Focus Group* and *Making Niche Marketing Work* (McGraw-Hill). The niche marketing book was selected for the *Business Week* Book Club, and has been published in German, Portuguese, Thai, Hebrew, and Korean.

A copy of my curriculum vitae is attached as Exhibit 1 and includes a complete list of my publications from the past ten years.

In the past four years, I have testified as an expert witness at trial or at deposition in the following cases:

- Jones/Knox vs. State of New York (2009)
- FTC v. Whole Foods (2007/8)
- Bischoff vs. Boars Head provisions (2007)

II. Assignment

As an initial matter, Keurig's counsel asked me to apply my expertise in the food and beverage industry and assess whether Keurig's "fluted-filter" beverage cartridge has achieved commercial success. Based on discussions with Professor Alexander Slocum, I understand that the fluted-filter cartridge is covered by numerous claims in Keurig's pending U.S. Patent Application No. 10/658,925 ("the '925 application"). Thus, I understand that my initial assignment was in essence to assess whether (and if so, to what extent) products covered by the '925 application claims had achieved commercial success.

As discussed in more detail below, I concluded that Keurig's fluted-filter cartridges have achieved tremendous commercial success over and above mere growth in the industry as a whole. This led to a second but related question: whether the commercial success achieved by the fluted-filter cartridge was due in significant part to functions and advantages associated with the invention described in the '925 application itself.

Exhibit 2 lists the materials that I reviewed in connection with my assignment.

I am being compensated at a rate of \$300 per hour. My compensation is completely unrelated to the outcome of the case.

III. Summary of Conclusions

Based on my analysis, it is my opinion that Keurig's fluted filter has achieved tremendous commercial success as a direct result of advantages associated with the invention disclosed in the '925 application. The fluted-filter cartridge gave Keurig a distinct advantage over competitors in the "single-serve" coffee industry. In particular, it allowed Keurig to market single-serve products that brew stronger "coffee-house style" coffee with flavor profiles that appeal to large numbers of consumers. It also opened the door for Keurig to begin selling brewers that produce larger beverage volumes (e.g., 10 and 12 ounces), thereby increasing the sense among consumers that Keurig's systems offered good value for the dollar. These advantages proved particularly important for Keurig when seeking relationships with high-end retailers (e.g., Williams Sonoma) and coffee roasters that specialize in "bold" taste profiles (e.g., Tully's and Caribou). These relationships further increased Keurig's overall appeal because they contributed to the impression of Keurig as an "open" system that offered users the ability to brew many different types of coffee rather than just a handful. In fact, I conclude that the fluted-filter design has been a critical factor driving Keurig's overall success in the retail "At Home" business. It is unlikely that Keurig would have succeeded in this marketplace if fluted filters had been unavailable and K-Cup portion packs instead had to be manufactured using the older conical-filter design.

IV. Background Information

Keurig sells both (1) single-serve “K-Cup portion packs” and (2) machines for turning those portion packs into actual cups of coffee or other beverages.¹



Based on discussions with Mark Wood (Keurig’s Vice President for Business Development) and John Whoriskey (Keurig’s Vice President and General Manager for the “At Home” Business), I understand that Keurig’s business model involves various other actors, including:

- (1) Coffee “roasters” that produce the blends of roasted and ground coffee beans going into the K-Cup portion packs and that also typically (although not always) manufacture the K-Cup portion packs themselves;
- (2) Retailers that sell Keurig brewing machines; and
- (3) Customers who buy the machines and in turn purchase K-Cup portion packs, which are available from various channels, including but not limited to (a) roasters, (b) retailers, (c) Keurig authorized distributors, and (d) Keurig itself.

Part A below considers the typical needs and concerns of these different players in the modern coffee marketplace. Part B describes my understanding of Keurig’s own history.

¹ Unless otherwise indicated, all images were obtained from Keurig’s web site (<http://www.keurig.com>).

A. The Modern Coffee Marketplace as a Whole

1. Coffee Roasters

Coffee roasters buy green coffee beans and turn them into products – often blends of different roasted beans – that simply need to be ground and brewed to enjoy. Roasters sometimes are also in the business of running retail establishments (i.e., “coffee houses”) in which they handle this final step as well and serve customers brewed cups of coffee. Starbucks is one particularly well-known example.

Roasters strive to have characteristic “flavor profiles” that remain consistent over time and often become closely linked to brand identity. For example, particular roasters are known for particularly “bold” flavor profiles.

Retaining the integrity of those flavor profiles therefore is important for coffee roasters to build and maintain brand equity and associated consumer loyalty. Even a single negative experience can sour a customer on the brand as a whole. Such concerns drive roasters to maintain consistency at all cost. For example, the CEO of Caribou Coffee Company wrote an article in 2006 describing a series of steps that Caribou took to “ensure that we deliver a consistent product.”² Roasters may even take steps to prevent competitors from delivering comparable flavor profiles.³

While some roasters have a national following, many are much more regional in nature. In other words, they have significant followings in particular parts of the country even though customers elsewhere are unlikely to have heard of them. For example, one Caribou’s roots are in the Midwest. In one 2007 study, 44% of people in the Midwest had heard of the Caribou brand versus just 26% in the Northeast and 28% nationwide. 28% of respondents overall had also heard of Green Mountain Coffee Roasters. The regional breakdown was very different, however: 61% of people in the Northeast versus 19% in the Midwest.⁴

2. Retailers

Much like roasters, retailers are very sensitive to their image in the marketplace and thus do not want to associate their name with products that fail to appeal to target customers. If a retailer is concerned that a product will leave consumers with an unfavorable impression of the retailer itself, the retailer will refuse to stock the product even if the manufacturer is offering tremendous incentives. The short-term bump in sales and/or margins is not worth the long-term risk of losing customers.

² Michael J. Coles, *Putting Customers First: That’s All That Counts*, Tea & Coffee Trade Journal (Oct. 1, 2006) (K105935-37).

³ For example, Keurig’s 2005 agreement with Tully’s – discussed in more detail later in my report – included provisions safeguarding Tully’s “proprietary testing procedures.” License and Distribution Agreement between Keurig, Incorporated and Tully’s Coffee Corporation (K000463-523), § 5.1.1.

⁴ Usage and Awareness Tracking (August 2007 – Godfrey Research) (K106215-30), p. 9.

3. Consumers

Ultimately, therefore, both roasters and retailers respond to what consumers themselves want. As such, the coffee market has changed significantly in recent years as a result of an evolution in consumers' own tastes and expectations for what constitutes a quality cup of coffee.

In the 1970s and 1980s, consumers were generally content to drink coffee made at home using conventional drip-style coffee makers. More recently, however, tastes have shifted. An increasing number of people – especially younger adults – are no longer satisfied with coffee brewed from an automatic drip machine. A recent survey by Mintel found that younger adults in particular were less likely to use such conventional equipment and instead more open to alternatives such as single-serve coffee makers, French presses, and espresso machines.⁵

While a number of factors have presumably figured into this trend, a particularly significant one is the increasing desire among consumers for stronger and more varied flavors. For example, one customer study commissioned by Keurig in 2005 reported that “respondents by and large preferred strong coffees” and frequently reported Starbucks as a brand of choice.⁶

Indeed, the shift in consumer preferences has been shaped in part by the rise of Starbucks and other companies that have invested heavily in the concept of making the gourmet “coffeehouse” experience an everyday event in people’s lives. It is evident that many people – particularly young adults – who drink coffee prefer to consume it at such “cafés”. Many also have a penchant for sweet and creamy specialty drinks such as Starbucks’ Frappuccino drinks. Marketers of packaged coffee can take steps to meet these consumer preferences by offering recipes and additives that help consumers make their own specialty drinks at home. This may become increasingly important in the future as Baby Boomers grow older and the young adults of today reach middle age.⁷

In addition, as noted above, there is also evidence that the preferences of coffee drinkers vary to some extent from region to region. A given cup could be perfect for the majority of coffee drinkers in one part of the country, but too weak to appeal to the average coffee drinker somewhere else.

Yet another important trend is that toward larger serving sizes. There is no question that Americans are increasing the size of their cups. While the “official” cup size is 6 ounces, the average serving size of coffee in the United States is now 9 ounces.⁸ Starbucks for one offers three sizes of coffee with the smallest size being 12 ounces, the current medium size at 16 ounces, and its current large size at 20 ounces.

⁵ Coffee US September 2010, Mintel Reports (K104495-530), Method of preparation, p. 1.

⁶ Keurig – Tassimo Focus Group (May 2005, Godfrey Research) (K001142-66), p. 6.

⁷ Coffee US September 2010, Mintel Reports (K104495-530), Competitive context, p 1.

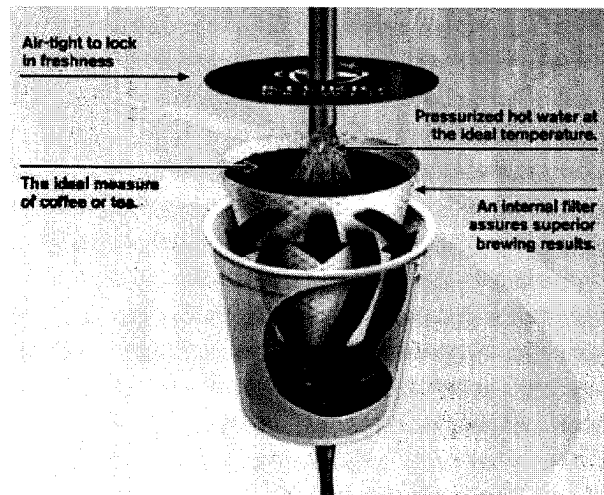
⁸ http://www.e-importz.com/Support/specialty_coffee.htm (K105933-34). See also Keurig – Tassimo Focus Group (May 2005, Godfrey Research) (K001142-66), p. 9 (reporting preferences for servings over 8 ounces).

All of this boils down to the recipe for success in the twenty-first century coffee market: offer customers (1) “coffee house” level strength and overall quality along with (2) numerous different varieties and (3) generous serving sizes.

B. Keurig’s Business Model and History⁹

a. Early History

Keurig was founded in 1992 with the goal of developing a technology platform to brew gourmet cups of coffee and tea one cup at a time. To this end, Keurig developed the “K-Cup” portion pack – a sealed beverage cartridge that integrates all of the necessary brewing elements into one small and disposable package:



Keurig also developed brewers that puncture two holes in the K-Cup portion pack – one in the foil lid to inject pressurized hot water and the other in the base to allow the brewed coffee to flow into the cup.

Keurig does not itself blend and roast the coffee that goes into K-Cup portion packs. Instead, Keurig entered into a series of license agreements with existing coffee roasters under which the roasters obtained the right to Keurig’s technology, thereby allowing them to manufacture K-Cup portion packs themselves. The roasters in turn paid Keurig a royalty for each K-Cup portion pack sold. Keurig’s first such agreement was with Green Mountain Coffee Roasters (GMCR) and was signed in December 1997.¹⁰

⁹ Unless otherwise indicated, the following overview is based on my review of documents provided by Keurig as well as discussion that I had with John Whoriskey and Mark Wood.

¹⁰ Licensing Agreement Between Keurig, Inc. and Green Mountain Coffee Roasters, Inc. (K104958-84).

K-Cup production began in 1998. Initially, Keurig's business was limited to the "Away-From-Home" (AFH) marketplace¹¹ and focused on pitching K-Cup portion packs and brewing machines as a superior alternative to the typically low-quality coffee that one ordinarily encountered in workplace environments at the time.

Keurig later entered into agreements with additional roasters, including Diedrich (in 2000),¹² Timothy's (in 2000),¹³ and Van Houtte (in 2001).¹⁴ Different roasters had different geographic strengths. For example, GMCR was well known in the Northeast,¹⁵ while Diedrich's strength was in Southern California.¹⁶ Timothy's and Van Houtte were most popular in Canada.¹⁷ Thus, Keurig's roster of roasters at the time left a significant geographic hole; potential customers in many parts of the United States were unlikely to be familiar with the handful of particular coffee brands then available in K-Cup portion packs.

At the time, K-Cup portion packs included a conical filter that limited the maximum amount of ground coffee or other beverage media in the cartridge to around 9.5 grams.¹⁸ While Keurig had tried to develop alternative cartridges with a larger capacity in order to facilitate bolder taste profiles, this work had proven unsuccessful. As described in the '925 application itself, "increas[ing] the amount of beverage medium available for brewing" reduced the quality of the saturation of the coffee bed.¹⁹ In fact, some records appear to indicate that at least one particular design – the "M-Cup" – actually resulted in weaker coffee even when using more coffee than could be packed into the conventional conical-filter K-Cup portion pack.²⁰

¹¹ Presentation to Dunkin' Donuts, March 17, 2006 (K000334-68), p. 5.

¹² Licensing Agreement Between Keurig, Inc. and Diedrich Coffee, Inc. (K104678-95).

¹³ Licensing Agreement Between Keurig, Inc. and Timothy's Coffee (K105314-32).

¹⁴ Licensing Agreement Between Keurig, Incorporated and Van Houtte Inc. (K105747-76).

¹⁵ Green Mountain Coffee Roasters, Inc. Form 10-K – December 13, 2007 (K104051-134), p.4 (referring to the Eastern United States as Green Mountain's "primary geographic market").

¹⁶ E.g., Green Mountain Coffee Roasters, Inc. Form 10-K – December 5, 2010 (K104297-444), p. 6 (noting that Green Mountain's acquisition of Diedrich allowed Green Mountain "to more effectively reach consumers in the southern California region").

¹⁷ E.g., *id.*, p. 6 (noting that Timothy's is based in Toronto and constitutes a "Canadian brand platform").

¹⁸ Fluted Filter K-Cup Strategy (K000190-92), at K000190.

¹⁹ '925 Patent Application (K000618-24), p. 2.

²⁰ Beverages solids concentrations, 5/2/2003 (K000120-25), at K000120.

b. Initial Efforts to Target the At Home Marketplace

Armed only with the conical-filter K-Cup portion pack, Keurig made an initial effort in 2003 to expand its business into the “At Home” (AH) marketplace – supplying K-Cup portion packs and brewers as an alternative to automatic drip machines and the various other devices that people use to make their choice of coffee or other beverages in the comfort of their own kitchens.

For this pilot project, Keurig focused on direct marketing as well as distribution through its partners (as opposed to retail sales), focusing on customers who were already familiar with the Keurig system in the AFH environment (e.g., having a Keurig machine at the office).²¹

Keurig’s AH efforts in 2003 appear to have been at best only marginally successful. Brewer sales fell well short of goals, with Keurig’s own “direct” sales achieving barely a third of expectations.²² Complaints included that the coffee was “too weak” and that the K-Cup portion packs were “too expensive.” Indeed, these were the two most commonly cited reasons why consumers returned brewers after purchase.²³ Customers emphasized the desire for a “stronger taste profile” as well as additional brands and varieties of coffee.²⁴

c. Development of the Fluted-Filter Cartridge

Around the same time, inventors at Keurig developed the “fluted-filter” cartridge described in the ‘925 application, which was filed in September 2003. The fluted-filter cartridge made it possible to pack up to around 14 grams of coffee or other beverage media in the K-Cup portion pack.²⁵ Unlike earlier efforts, moreover, the quality of the brewing process itself remained high. As a result, the final product contained significantly higher levels of total dissolved solids (“TDS”) than had previously been attainable. The practical result was an ability to offer a “more intense, extra-bold taste profile.”²⁶ In fact, later in 2003 Keurig tested fluted-filter cartridges so as to assess whether they satisfied the then-existing taste complaints.²⁷

²¹ Presentation to Dunkin’ Donuts, March 17, 2006 (K000334-68), p. 5.

²² Board of Directors Update 12/10/03 At Home Division (K075483-88), p. 1.

²³ Keurig Update, May 7, 2004 (K000213-27) at K000214; Board of Directors Update 12/10/03 At Home Division (K075483-88), p. 3.

²⁴ Keurig Update, May 7, 2004 (K000213-27) at K000215.

²⁵ Fluted Filter K-Cup Strategy (K000190-92), at K000190; Presentation to Dunkin Donuts, October 22, 2004 (K000282-333), p. 10.

²⁶ Presentation to Caribou Coffee, October 27, 2005 (K000261-81), p. 7.

²⁷ Board of Directors Update 12/10/03 At Home Division (K075483-88), p. 3.

d. Renewed Efforts to Target the At Home Marketplace

In 2004, Keurig renewed its effort to target the AH marketplace. In particular, Keurig arranged for the production of a new coffeemaker (the B50) and searched for retailers interested in stocking both this appliance and the K-Cup portion packs themselves. These efforts proved successful, and Keurig launched its retail AH business in time for the 2004 holiday season.²⁸

The availability of the fluted-fluted cartridges figured particularly prominently in Keurig's negotiations with Williams Sonoma – an upscale on-line and bricks and mortar specialty retailer. I have reviewed correspondence from Keurig to Williams Sonoma referring specifically to the anticipated launch of fluted-filter K-Cup portion packs in the fourth quarter of 2004.²⁹ Similarly, notes from a June 23, 2004 meeting refer to having “made significant progress today thanks to...having fluted filter K-Cups from GMCR.”³⁰ I understand that Williams Sonoma had previously refused to consider selling Keurig's product line as a result of concern that the K-Cup portion pack did not deliver the flavor that Williams Sonoma believed its consumers desired and would be willing to pay for. This information is entirely consistent with my analysis in Section IV.B above regarding the retail environment as a whole. It would be a serious error for Williams Sonoma to market a product likely to disappoint consumers. It would tarnish the company's brand image, reduce its brand equity, and lead to costs associated with returns.

Similarly, the buyer for Bloomingdales – an upscale department store – specifically “want[ed] to be sure fluted K-Cups” would be available.³¹

Once fluted-filter K-Cup portion packs did become available, moreover, Keurig made a point of emphasizing this new development in demonstrations with potential customers. Training manuals specifically called attention to the fluted filter technology and directed demonstrators to explain that the associated “Extra Bold” K-Cup portion packs held up to 13 grams of coffee, as compared to 9 grams for regular K-Cup varieties. The manuals even advised demonstrators to cut K-Cup portion packs open and remove the coffee, thereby allowing customers to see the filters inside.³²

²⁸ Presentation to Dunkin' Donuts, March 17, 2006 (K000334-68), p. 5.

²⁹ Letter from John Whoriskey to Patrick Hind-Smith & Neil Lick (K000228-32), at K000228.

³⁰ Williams Sonoma Meeting June 23, 2004 (K000233-34), at K000233.

³¹ Bloomingdales Sales Call – July 8, 2004 (K004401-02), at K004401.

³² Demonstration Training Manual Fall 2006 (K036375-404), pp. 6 & 16; Demonstration Training Manual Spring 2007 (K036745-72), pp. 6 & 16.

This content came in the wake of comments from Keurig's then-CEO Nick Lazaris, who emphasized the ability to get substantially more coffee inside the cartridge than competitors were able to achieve: "Even with quality coffee, too little will not produce a robust cup and this is a competitive advantage of ours."³³ John Whoriskey, Keurig's Vice President and General Manager for the AH division, agreed that such material needed to be added.³⁴

e. Integration of Additional Roasters into the Keurig System

The fluted-filter cartridge also proved critical when Keurig was negotiating with additional coffee roasters to broaden the variety of coffee available in K-Cup portion packs and thus the perceived "openness" of the Keurig system as a whole. In November 2005, Keurig licensed Tully's to begin producing and selling Tully's-branded K-Cup portion packs.³⁵ Later, in December 2006, Keurig finalized a contract with Caribou Coffee under which Caribou would sell coffee blends to Keurig and allow Keurig to package it in K-Cup portion packs using Caribou's trademarks.³⁶

I understand that neither Tully's nor Caribou had been interested in partnering with Keurig earlier in its history, when only the conical filter (with its limit of approximately 9.5 grams of coffee or other beverage media) was available. In fact, I understand that every single Tully's and Caribou K-Cup portion pack ever sold has contained a minimum of 10 grams of coffee. I also understand that such K-Cup portion packs would be impossible to manufacture using the older conical-filter design.

Indeed, the initial success with the fluted-filter design in the fall of 2003 was what led Keurig to "renew efforts" to recruit Caribou.³⁷ When Caribou eventually did reach agreement with Keurig, moreover, it insisted on a particular clause designed to safeguard Caribou's brand integrity. Specifically, Caribou obtained the right to "have its professional coffee taste testers compare the same type of Caribou Coffee brewed in Caribou K-Cup portion packs and Keurig Brewers versus conventional drip brewing systems with the objective of providing similar taste quality levels via the Keurig Brewing System as judged by Caribou."³⁸

³³ August 19, 2005 email chain between Nick Lazaris and John Whoriskey (K035540-41) at K035541.

³⁴ Id. at K035540.

³⁵ License and Distribution Agreement Between Keurig, Incorporated and Tully's Coffee Corporation (K000463-523).

³⁶ Purchase and License Agreement Between Keurig, Incorporated and Caribou Coffee Company, Inc. (K000532-79).

³⁷ 9/1/03 memo re Priorities to year End (K075463-65), p. 3.

³⁸ Purchase and License Agreement Between Keurig, Incorporated and Caribou Coffee Company, Inc. (K000532-79), § 8.1.1.

In other words, Caribou wanted to ensure that customers purchasing Caribou K-Cup portion packs would experience the same sort of taste profiles that they were accustomed to enjoying when consuming Caribou coffee in other settings. This echoes Caribou's previously-noted emphasis on delivering a "consistent product."³⁹ Caribou's testers ultimately recommended that each Caribou K-Cup portion pack contain at least 11.5 grams or more of Caribou coffee.⁴⁰ As discussed above, such throw weights were possible only with Keurig's fluted-filter technology – not the older conical filter.

Similarly, Keurig's Vice President for Business Development Mark Wood reported in February 2004 to then-CEO Nick Lazaris that Tully's CEO had been "very impressed" with what Keurig had to offer.⁴¹ Wood emphasized, however, that Keurig would not even "be in the game without the fluted filter."⁴² Indeed, Tully's had at one point concluded that Keurig was not able to achieve Tully's targeted taste profile.⁴³ The fluted filter addressed this problem.⁴⁴

The addition of Tully's and Caribou filled important geographic gaps for Keurig, as Tully's was based in Seattle and well known on the West Coast while Caribou's roots were in the Midwest. As noted above, none of Keurig's roaster partners as of 2005 had strong name recognition in the Midwest, nor anywhere in the West outside of Southern California. When Keurig commissioned a series of focus groups in 2005, for example, participants did not frequently mention interest in brands that were then associated with Keurig's platform. Green Mountain was mentioned several times by Boston participants, but apparently not in Chicago or Los Angeles.⁴⁵ By the same token, as of 2004 Keurig's nationwide share of office coffee was only 2% even for the AFH market, in which Keurig had already been competing for 7 years.⁴⁶ That number jumped to 10% in the Northeast,⁴⁷ where Green Mountain – Keurig's original roaster partner – was well known.

³⁹ Michael J. Coles, *Putting Customers First: That's All That Counts*, Tea & Coffee Trade Journal (Oct. 1, 2006) (K105935-37).

⁴⁰ Interview with Brett Struwe (Caribou Roastmaster).

⁴¹ 2/20/04 email from Mark Wood to Nick Lazaris (K084155-59).

⁴² Id.

⁴³ May 4, 2005 memorandum re Briefing Memo for May 5 Board Meeting (K045975-79), p. 2.

⁴⁴ Id.

⁴⁵ Keurig – Tassimo Focus Group (May 2005, Godfrey Research) (K001142-66), p. 6. Los Angeles participants likewise only mentioned Diedrich. Id.

⁴⁶ Presentation to Dunkin Donuts, October 22, 2004 (K00282-333), p. 13.

⁴⁷ Id.

More recently, Keurig reached an agreement with Starbucks under which Green Mountain Coffee Roasters will soon begin manufacturing K-Cup portion packs with Starbucks coffee and Starbucks will even sell Keurig brewers and Starbucks K-Cup portion packs in Starbucks stores.⁴⁸ I understand that a key prerequisite for this deal was Keurig's ability to demonstrate that a cup of Starbucks coffee brewed using a K-Cup portion pack provided Starbucks' own professional "cuppers" with the same taste as that enjoyed when brewing the same Starbucks coffee using a conventional drip coffeemaker. When announcing the partnership, Starbucks CEO Howard Schulz emphasized that it would "enable Starbucks customers to enjoy perfectly brewed Starbucks coffee at home, one quality cup at a time."⁴⁹ Such emphasis reflects the importance that Starbucks and other coffee roasters (as well as other sellers in the broader food and beverage industry, for that matter) attach to protecting brand integrity. If customers tried Starbucks K-Cup portion packs and found that the taste was not the same as that enjoyed with Starbucks products in other contexts, the experience would threaten Starbucks' future sales even in market segments that have nothing whatsoever to do with K-Cup portion packs. Furthermore, I understand that achieving the necessary Starbucks taste profile required coffee fill rates of 14 grams – far beyond what had been possible with conical-filter K-Cup portion packs.⁵⁰ Instead, "long" fluted-filter K-Cup portion packs must be used.

f. Brewers and Serving Sizes

Over the years, Keurig has developed a variety of different brewers for the AH marketplace. Prior to the 2007 launch of the B70 brewer, however, none was capable of brewing more than 10 ounces of coffee or other beverage per K-Cup portion pack. For example, the B50 – the original retail AH brewer, launched in the fourth quarter of 2004 – offered only 6 and 8 ounce brew options.⁵¹

By contrast, the B70 offered customers the ability to brew up to 12 ounces.⁵² I understand that it had not been practical for Keurig to invest in developing such products when only the conical-filter K-Cup portion packs (with their limit of approximately 9.5 grams of coffee) had been available. With the fluted-filter K-Cup portion pack and the associated increase in the amount of coffee that could be packed into the cartridge, however, larger volume settings became feasible.⁵³ This gave Keurig the ability to respond to consumer feedback emphasizing the "need for more volume per cup."⁵⁴ Specifically, consumers were "drinking more per cup and wanting more value per K-Cup" than that possible with volumes in the range of 8 ounces.⁵⁵

⁴⁸ Starbucks Corporation and Green Mountain Coffee Roasters, Inc. Enter Into Strategic Manufacturing, Marketing, Distribution and Sales Relationship (K104492-94).

⁴⁹ Id.

⁵⁰ Fluted Filter K-Cup Strategy (K000190-192) at K000190.

⁵¹ Presentation to Caribou Coffee, October 27, 2005 (K00261-281), p. 8.

⁵² Demonstration Training Manual Spring 2007 (K036745-72), p. 8.

⁵³ Fluted Filter K-Cup Strategy (K000190-192) at K000190.

⁵⁴ Id.

As then-CEO Nick Lazaris commented, the B70's 12 ounce brew setting and the corresponding availability of "Extra Bold" fluted-filter Cups gave Keurig a significant competitive advantage.⁵⁶ In particular, this benefit of the fluted-filter technology distinguished Keurig over rival systems.⁵⁷

Furthermore, customer requests for "larger serving sizes" appear to have decreased significantly after the B70 became available.⁵⁸

g. Growth and Industry Consolidation

In June 2006, Green Mountain paid approximately \$104.3 million to purchase the roughly 65% of Keurig that it did not previously own.⁵⁹ Since then, Keurig has operated as a wholly-owned subsidiary of Green Mountain. In reality, however, Keurig's single-cup system now accounts for the vast majority of Green Mountain's total business and has been driving the parent company's growth.⁶⁰ For the first quarter of fiscal year 2011, for example, 91% of Green Mountain's total consolidated sales came from Keurig-related products.⁶¹ Green Mountain's total net sales increased by \$229.8 million compared to the first quarter of fiscal year 2010.⁶² Of that increase, over 98% (\$225.3 million) was attributable to Keurig – a \$156.7 million increase in K-Cup portion pack revenue and a \$68.6 million increase in Keurig brewer and accessory sales.⁶³

⁵⁵ Id.

⁵⁶ January 17, 2006 email from Nick Lazaris to William Jacobs (K035584-85).

⁵⁷ August 19, 2005 email chain between Nick Lazaris and John Whoriskey (K035540-41).

⁵⁸ For example, compare April 2005 Customer Satisfaction Survey (K033128-32), p. 3 (27% of respondents requesting "larger serving size") with November 2006 B70 Satisfaction Survey Results (K033217-24), p. 3 (2% of respondents requesting "larger serving size").

⁵⁹ Green Mountain Coffee Roasters, Inc. Form 10-Q – February 8, 2007 (K104020-50), at 15 of 31.

⁶⁰ Green Mountain Coffee Roasters, Inc. Form 10-K – December 5, 2010 (K104297-444), p. 5 ("[O]ur growth has been driven predominantly by the growth and adoption of the Keurig single-cup brewing system. In fiscal 2010, 88% of our consolidated net sales could be attributed to the combination of K-Cup portion pack, brewer, related accessory and third party licensed royalty sales.")

⁶¹ Green Mountain Coffee Roasters, Inc. Form 10-Q – February 3, 2011 (K104445-91), p. 34.

⁶² Id.

⁶³ Id.

During 2009 and 2010, moreover, Green Mountain acquired key licensed roasters – including Tully’s (completed in March 2009),⁶⁴ Timothy’s (completed in November 2009), Diedrich (acquired in May 2010), and Van Houtte (acquired in December 2010).⁶⁵ The K-Cup portion pack business drove these acquisitions. Green Mountain itself explained that the purpose was to “ensure adequate capital investment in the growth and expansion of K-Cup portion packs.”⁶⁶ Furthermore, the Diedrich acquisition followed a bidding war between Green Mountain and Peet’s. The price soared from Peet’s initial offer of \$213 million⁶⁷ to the completed Green Mountain deal value of more than \$300 million.⁶⁸ Peet’s wanted to acquire Diedrich’s license to make K-Cup portion packs.⁶⁹ As one industry commentator noted, “Peet’s want[ed] in, and Green Mountain [wanted] to keep Peet’s out.”⁷⁰ This bidding war would never have happened without the fluted filter, as Peet’s had concluded that Keurig’s original technology was not able to achieve the Peet’s taste profile.⁷¹

V. Analysis

A. Commercial Success Achieved by Keurig’s Fluted-Filter Cartridge

As noted above, my first assignment was to apply my expertise in food and beverage marketing and determine whether and to what extent Keurig’s fluted-filter cartridges have achieved commercial success. I conclude that the cartridges have in fact been an unqualified commercial success. More than three billion were sold in 2010 alone. When reviewing overall K-Cup portion pack sales based on royalty reports,⁷² moreover, I noted what appeared to be a significant increase in the growth rate starting around the time that the transition to the fluted filter began in 2005. To test that hypothesis, I prepared trend lines for the periods before (2001-04) and after (2006-10) the introduction of the fluted filter, as illustrated by the graph below. This analysis confirmed the increased growth rate in the years following the transition to the fluted-filter technology.

⁶⁴ Specifically, Green Mountain bought substantial assets of Tully’s wholesale business. Green Mountain Coffee Roasters, Inc. Form 10-K – December 5, 2010 (K104297-444), p. 6.

⁶⁵ Green Mountain Coffee Roasters, Inc. Form 10-K – December 5, 2010 (K104297-444), pp. 5-6.; Green Mountain Coffee Roasters, Inc. Form 10-Q – February 3, 2011 (K104445-91), p. 13.

⁶⁶ Green Mountain Coffee Roasters, Inc. Form 10-K – December 5, 2010 (K104297-444), p. 5.

⁶⁷ Jerry Hirsch, *Battle for Diedrich Coffee Heats Up*, L.A. Times (Dec. 7, 2009) (K105930-32).

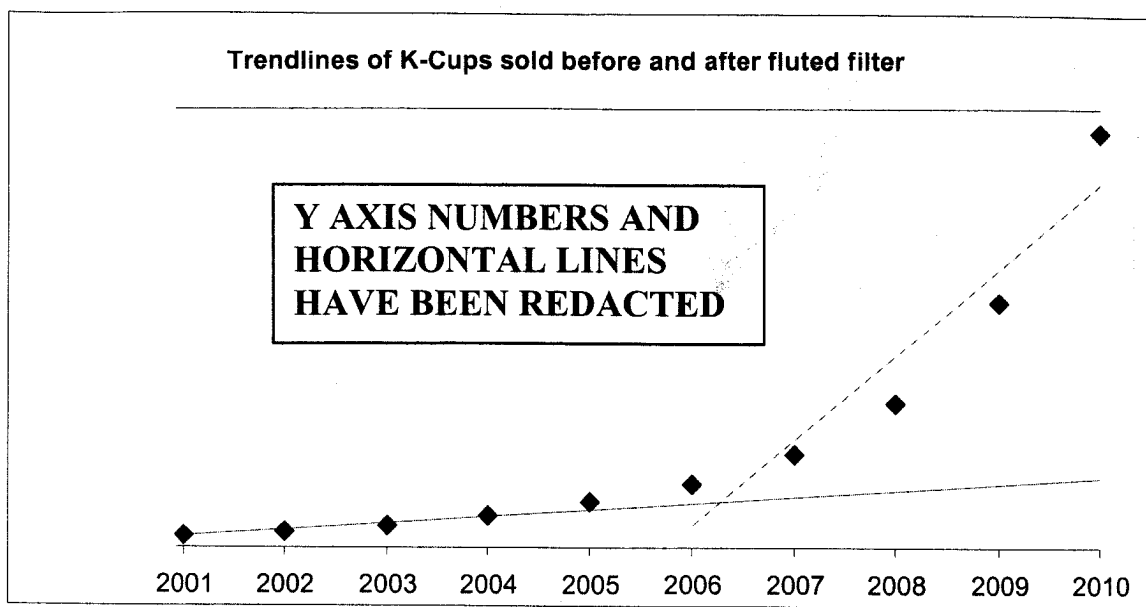
⁶⁸ Green Mountain Coffee Roasters, Inc. Form 10-K – December 5, 2010 (K104297-444), p. 30.

⁶⁹ Jerry Hirsch, *Battle for Diedrich Coffee Heats Up*, L.A. Times (Dec. 7, 2009) (K105930-32).

⁷⁰ Id.

⁷¹ May 4, 2005 memorandum re Briefing Memo for May 5 Board Meeting (K045975-79), p. 2.

⁷² K001203; K001458; K001469; K001476; K001483; K001490; K001496; K001502; K001515; K001528.



I also analyzed Keurig's market share over time. Market-share analysis is important because it allows one to distinguish company-specific commercial success from an overall improvement in the fortunes of an industry as a whole. For example, a company would be considered extremely successful if its sales increased 50% in the course of a year when rivals saw flat numbers. But that same 50% increase would be much less impressive if others in the industry had enjoyed increases of 100% or 200%.

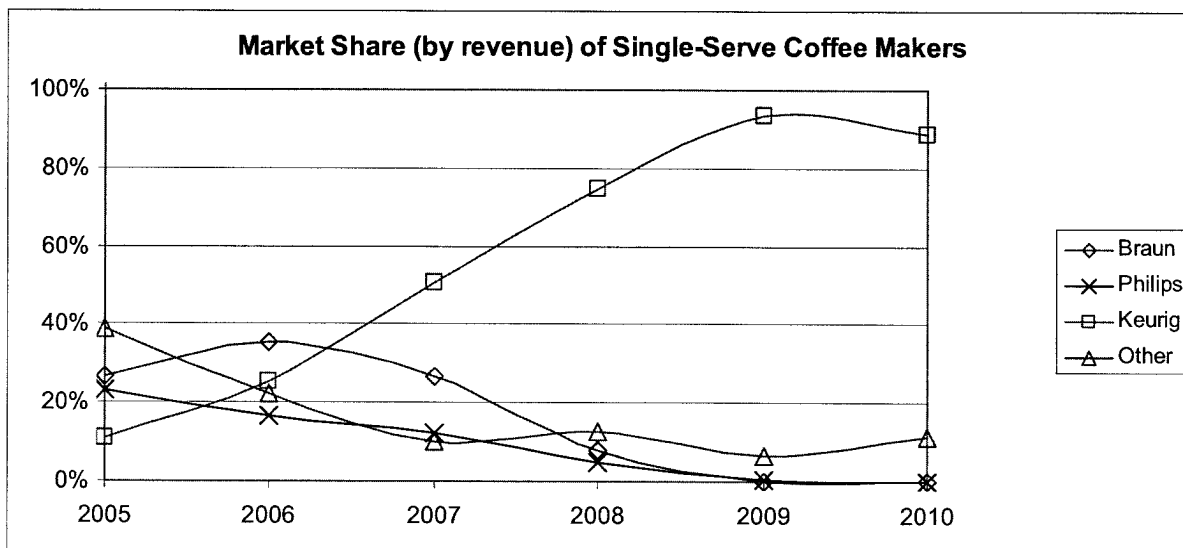
To this end, it is significant that many other companies were already offering or launching single-serve brewing systems when Keurig first launched its retail AH business in late 2004. Rivals included the following:

- Phillips/Sara Lee – Senseo
- Salton – Melitta One:One
- Procter & Gamble/Sunbeam/Black & Decker/Mr. Coffee/Krups – Home Café
- Grindmaster – Precision Pod Brewer
- Bunn-o-Matic – My Café
- Nestle – Nespresso
- Kraft/Braun/Saeco/Bosch – Tassimo⁷³

⁷³ Presentation to Dunkin Donuts, October 22, 2004 (K00282-333), pp. 30-33; Jennifer White, *Too Pleased With the Pods*, Home Furnishing News, Jan. 17, 2005 (K001170-71); Jennifer Quail, *In Pod They Trust*, Home Furnishing News, Sept. 1, 2003 (K001173-74); Ed Lieber, *Pod Brewers Gaining Placement At Retail*, Homeworld Business News, Aug. 2, 2004 (K001175-77); Ed Lieber, *Let the Single-Serve Coffeemaker Battle Begin*, Homeworld Business News, March 15, 2004 (K001178-79); Ed Lieber, *Sudden Spurt of Pod Brewers Gives Retailers Many Options*, Homeworld Business News, May 10, 2004 (K001180-81).

Noting this crowded field, one trade publication questioned in 2005 “whether the market [could] support multiple systems.”⁷⁴

Based on market-share data that I understand Keurig obtained from the NPD Group,⁷⁵ it appears that these concerns were well-founded. Many systems launched in the 2003-2005 time frame have flopped. Keurig, however, has done extremely well, as illustrated in the graph below, despite starting out with negligible resources in comparison to giants such as Braun, Kraft, and Phillips.



In fact, others have acknowledged Keurig/Green Mountain as the “clear leader” in the single-serve sector.⁷⁶

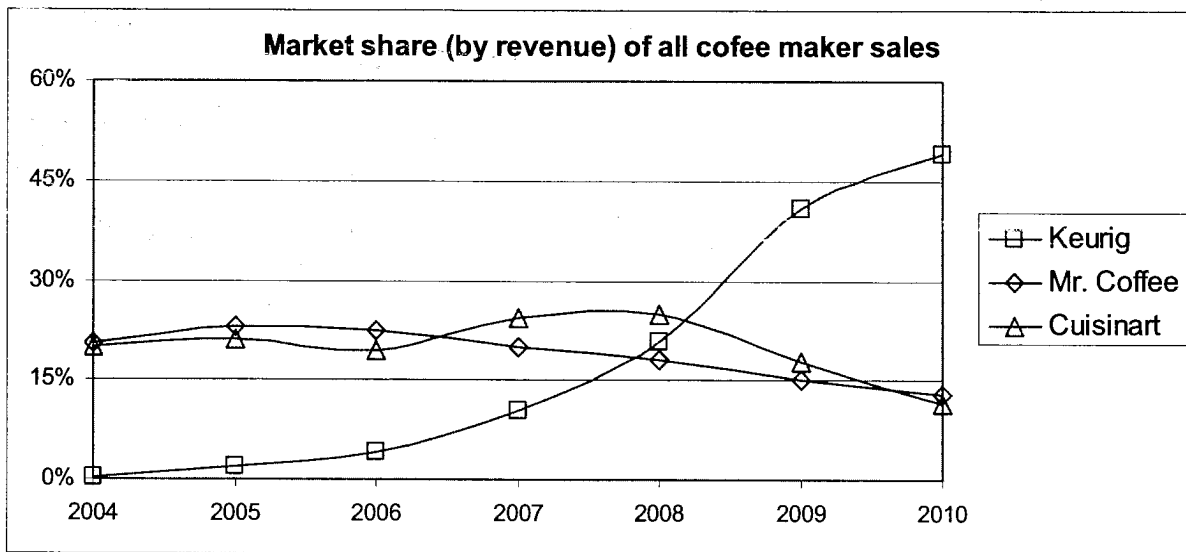
It is also instructive to review NPD market share data for the entire coffee category as a whole (i.e., including machines like conventional automatic drip machines rather than just single-serve products).⁷⁷ Keurig’s market share has risen over time even while competitors like Mr. Coffee and Cuisinart, the two largest overall players from 2004 to 2010, have faltered:

⁷⁴ Jennifer White, *Power of the Pod*, Home Furnishing News, Apr. 25, 2005 (K001167-68).

⁷⁵ K001232; K001541; K001568.

⁷⁶ Euromonitor, *Hot Drinks in the US, 2010* (“GMCR is the clear US leader in pod brewing formats, with a hard pod, constructed in a way that it claims enhances the brewing process.”); see also Lauren DeSanto, *As Green Mountain’s Business Grows on Starbucks Deal, Coffee Holding Benefits; Shares Undervalued*, Toronto Star, Mar. 14, 2011 (K104531) (referring to Green Mountain as the “market share leader in the single-cup brewing category”).

⁷⁷ K001232; K001541.



For the last three months of 2010, for example, every single one of the five highest-grossing coffeemakers in the United States incorporated Keurig technology.⁷⁸

While the market-share data concerns brewer sales rather than fluted-filter K-Cup portion pack sales, I do not believe that the distinction is significant to my analysis. First, single-serve brewer sales are a reasonable proxy for single-serve cartridge sales, as the brewers are worthless without a steady stream of cartridges. **REDACTED**

REDACTED Second, I understand that every single coffee and tea K-Cup portion pack sold since 2008 incorporates fluted-filter technology.

The market-share data thus confirms my opinion that Keurig's fluted-filter cartridges – the essential “input” for Keurig's coffeemakers – have achieved tremendous commercial success. So too does the fact that Keurig accounted for \$727.8 million in net sales in the 2010 fiscal year,⁷⁹ up from \$134.8 million in 2007⁸⁰ – shortly after the launch of the fluted-filter product.

B. Analysis of the Reasons for Keurig's Commercial Success

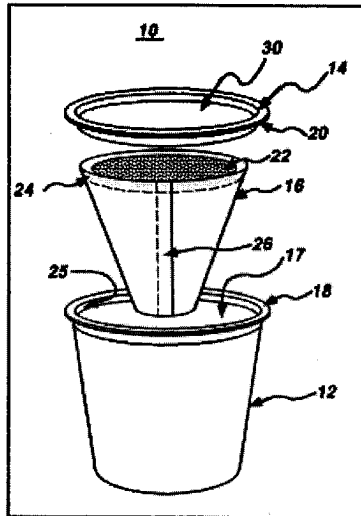
Having concluded that Keurig's fluted-filter cartridges have achieved significant commercial success, my second task was to assess the likely reasons for that success. In particular, counsel asked me to consider whether it is probable that Keurig's success stemmed in significant part from features available with the fluted-filter cartridge but unavailable in earlier products such as Keurig's conical-filter cartridge.

⁷⁸ Starbucks Corporation and Green Mountain Coffee Roasters, Inc. Enter Into Strategic Manufacturing, Marketing, Distribution and Sales Relationship (K104492-94).

⁷⁹ Green Mountain Coffee Roasters, Inc. Form 10-K – December 5, 2010 (K104297-444), p. 31.

⁸⁰ Green Mountain Coffee Roasters, Inc. Form 10-K – December 13, 2007 (K104297-444), p. 23.

Based on the materials that I have reviewed and the interviews that I have conducted, I conclude that improvements associated with the fluted-filter cartridge and unavailable with the older conical-filter cartridge (without flutes) were a major reason for the fluted-filter cartridge's commercial success. I understand based on discussions with Professor Alexander Slocum that the fluted-filter cartridge is covered by many of the claims in Keurig's '925 patent application. I also understand from Professor Slocum that the older conical-filter cartridge is illustrated in an older patent to Sylvan (No. 5,325,765).



Therefore, my analysis (as detailed below) leads me to conclude that the commercial success of the fluted-filter cartridge has stemmed in significant part from benefits associated with the invention described in the '925 patent application claims and not illustrated in "prior art" such as the '765 Sylvan patent.

Simply put, the fluted-filter cartridge's ability to accommodate more coffee than the older conical-filter cartridge while still achieving good saturation proved critical in allowing Keurig to respond to two common concerns that early Keurig customers raised: a desire for (1) stronger taste profiles and (2) more brands and varieties.⁸¹ It also differentiated Keurig from competitors that were not able to provide roasters with additional coffee capacity to develop such varieties.⁸²

As discussed in Section IV.A above, accommodating consumer demand for stronger and more varied types of coffee is an essential ingredient for success in the twenty-first century coffee marketplace, which is saturated with Starbucks, Peet's, and other chains marketing the "coffeehouse" experience.

⁸¹ Presentation to Caribou Coffee, October 27, 2005 (K00261-81), p. 11; see also Keurig Update (May 7, 2004) (K000213-27) at K000214-15; Keurig: Overview and BP2007 (K103032-57), p. 6 explaining that the fluted filter "results in a bolder, more full bodied taste profile" and "addressed a major consumer complaint – coffee too weak")

⁸² Presentation to Dunkin Donuts, October 22, 2004 (K000282-333), p. 40.

Keurig itself used Starbucks and Peet's as two of the benchmark references for Keurig's 2003 "West Coast Taste Profile project."⁸³ To this end, Keurig gathered a variety of coffee blends purchased from Starbucks and Peet's retail stores, then tested them to determine the concentration of soluble materials.⁸⁴ Of the six samples from Peet's, all but one registered levels of at least 1500 ppm. Furthermore, every single reading from Starbucks was over 1150 ppm.

Prior to the development of the fluted-filter cartridge, however, Keurig products could not produce coffee even close to these benchmarks. As one May 2003 test revealed, filling K-Cup portion packs with Peet's or Caribou coffee yielded readings less than 1000 ppm.⁸⁵ Concentrations were even lower when filling a different type of cartridge (the "M-Cup") with even larger amounts of coffee.⁸⁶ Keurig eventually concluded that the M-Cup was unlikely to yield the desired "West Coast taste" profile, and in fact that Keurig's then-existing cartridges were "not close."⁸⁷

By contrast, subsequent tests in September 2003 indicated that fluted-filter K-Cup portion packs could produce Peet's, Seattle's Best, and Starbucks coffee blends with solubles concentrations in the range of 1100-1250 ppm.⁸⁸ In short, the fluted-filter cartridge addressed what previously had been a "major consumer complaint" – that Keurig-brewed coffee had simply been "too weak."⁸⁹

The availability of fluted-filter cartridges indeed proved critical in winning over Williams Sonoma executives, many of whom drank Peet's coffee themselves and therefore had previously been skeptical about carrying Keurig products at all.⁹⁰ Convincing Williams Sonoma to carry Keurig products was particularly significant given the potential for a "halo effect" based on Williams Sonoma's own reputation. As one customer explained when asked about the decision to buy a Keurig system, "I trust Williams Sonoma to carry the best brands."⁹¹

⁸³ West Coast Taste Profile (K000205-06) at K000205.

⁸⁴ Retail-coffee-shop-brewed coffee beverage electrical conductivity (K000119).

⁸⁵ Beverage solids concentrations, 5/2/2003 (K000120-25) at K000120.

⁸⁶ Id.

⁸⁷ M-Cup Brainstorming Meeting (K000207-08) at K000207.

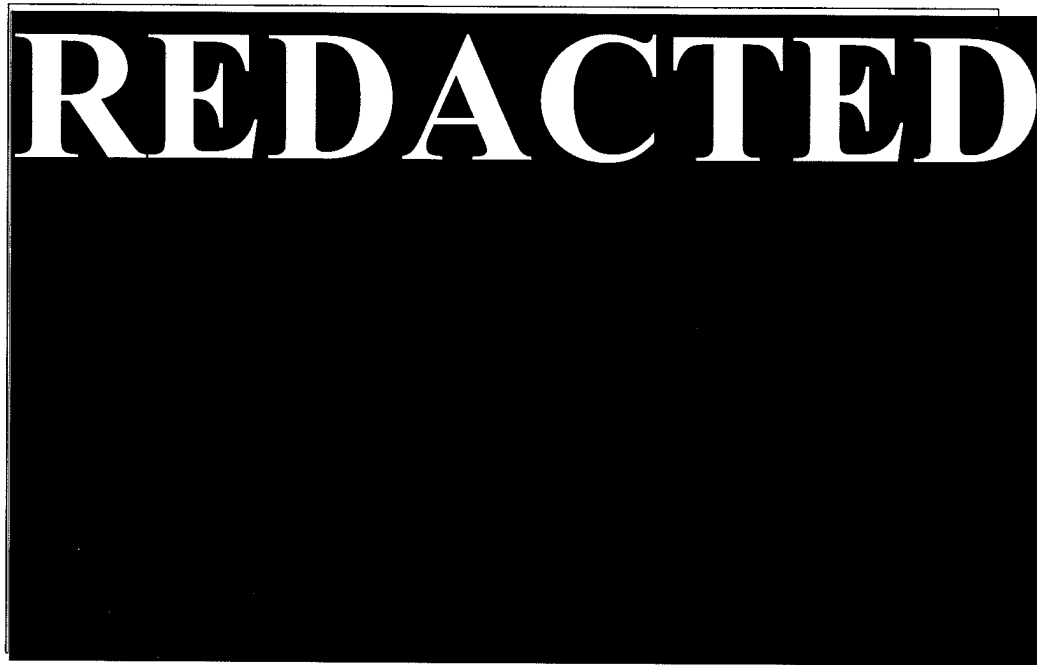
⁸⁸ Beverage Electrical Conductivity, Brew Pressure, Brew Duration (K000126-29) at K000126.

⁸⁹ Keurig: Overview and BP2007 (K103032-57), p. 6.

⁹⁰ Williams Sonoma Meeting June 23, 2004 (K000233-34), at K000233.

⁹¹ June 2005 Customer Satisfaction Survey (K033133-38), p. 5.

The significance of the fluted-filter invention can also be seen by tracking the percentage of total K-Cup portion pack sales that concern cartridges filled with at least 10 grams of coffee, which is more than the older conical-filter cartridges could accommodate.⁹² The data that I have reviewed from John Whoriskey⁹³ indicate that such “Extra Bold” products constitute an increasing percentage of Keurig’s business in the years since 2005, when fluted-filter cartridges were first introduced to the market.



These sales by definition constitute K-Cup portion pack varieties that were not available prior to the invention of the fluted-filter cartridge. Significantly, however, I understand that these cartridges could be used even with older Keurig brewers, thereby maintaining loyalty and fostering goodwill on the part of existing Keurig owners.

In particular, as discussed above, I understand that the ability to produce K-Cup portion packs that accommodate at least 10 grams of coffee without sacrificing saturation quality was an absolutely critical selling point for attracting Tully’s and Caribou to the Keurig platform. This is logical in view of the value that Caribou’s CEO attached to maintaining consistency across all Caribou-branded products.”⁹⁴ Neither Tully’s nor Caribou entered into an agreement with Keurig until after fluted-filter K-Cup portion packs were already in production.

⁹² Fluted Filter K-Cup Strategy (K000190-92) at K000190.

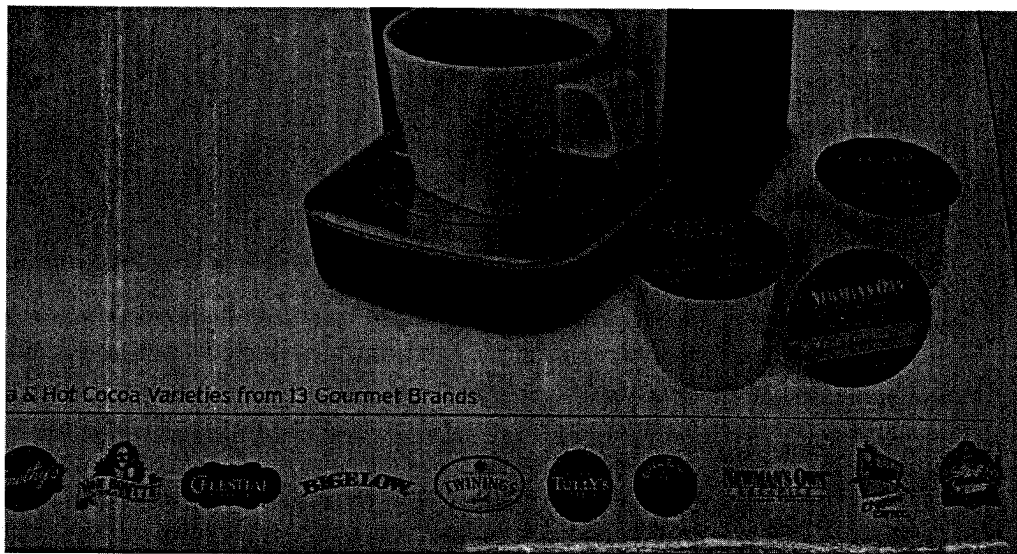
⁹³ K001184.

⁹⁴ Michael J. Coles, *Putting Customers First: That’s All That Counts*, Tea & Coffee Trade Journal (Oct. 1, 2006) (K105935-37).

Integrating well-known brands such as Tully's and Caribou into the Keurig system increased the appeal of the system to customers. As Euromonitor reported, one of the "major reasons" for interest in the system was the partnership with "successful regional brands," thus "allow[ing] consumers who already have a familiar product to try although they may be new to the brewing process" itself. When pitching to Caribou in 2005, Keurig itself freely acknowledged the benefits of being able to "piggyback" the brand recognition of branded roaster partners.⁹⁵ Prior to Keurig's agreements with Tully's and Caribou, however, customers in many parts of the country were unlikely to be familiar with any of the then-existing partners.

Given the nature of consumer preferences as well as Keurig's own business model, moreover, the significance of adding Tully's, Caribou, and other K-Cup portion packs with 10 or more grams of coffee went well beyond the raw sales numbers for those particular cartridges themselves.

For example, the availability of Tully's and Caribou K-Cup portion packs likely made Keurig's system significantly more attractive to customers than they otherwise would have been, thereby driving overall K-Cup portion pack sales higher and higher. Even Keurig's brewer packaging materials prominently illustrate the various available brands:



The length of this list impacts buying decisions for several different reasons.

For one, some customers will buy Keurig brewers because they are familiar with particular brands (e.g., people in the West who are aware of Tully's), but ultimately gravitate toward K-Cup portion packs that incorporate other brands (e.g., Green Mountain). Research indicates that Keurig brewer owners do in fact often change their minds over time as to particular "favorite brands."⁹⁶ In fact, Keurig sells a number of "Variety Packs" (as shown in the picture below⁹⁷) that allow customers to sample products from various different roasters:

⁹⁵ Presentation to Caribou Coffee, October 27, 2005 (K000261-81), p. 4.

⁹⁶ *Id.*, p. 12.



In certain cases, Keurig has even offered free assortment packs for the specific purpose of exposing brewer purchasers “to all brands” of coffee for which K-Cup portion packs are available.⁹⁸

Separately, the availability of numerous different options attracts certain customers to the Keurig system and its perception of “openness” even if they are not particularly familiar with any of the particular brands actually listed. This was exactly what researchers observed when conducting focus groups when consumers were invited to compare Keurig’s products with the rival “Tassimo” line offered by Kraft. Participants seldom mentioned an actual interest in the particular brands associated with Keurig’s system.⁹⁹ Yet a majority favored Keurig over Tassimo, and the most common reason by far was the “variety of coffee and/or tea” available.¹⁰⁰ The most frequent complaint about Tassimo was that the system offered “too few coffee choices.”¹⁰¹

In addition, the availability of “Extra Bold” varieties likely has had a positive impact even on sales of K-Cup portion packs with milder coffee flavor profiles. I understand that all of these K-Cup portion packs now incorporate the fluted-filter invention as well.

⁹⁷ Picture obtained from <http://www.amazon.com>.

⁹⁸ Presentation to Caribou Coffee, October 27, 2005 (K00261-81), p. 13(emphasis added).

⁹⁹ Keurig – Tassimo Focus Group (May 2005, Godfrey Research) (K001142-66), p. 6.

¹⁰⁰ *Id.*, p. 11.

¹⁰¹ *Id.*

Consumers typically buy only one brand of single-serve coffee brewer. Breadth of options, as made possible by the fluted filter, was critical to Keurig's winning the position as the leading brand. Families will commonly have multiple coffee drinkers, with a range of coffee preferences – strong versus less intense blends, for example; or coffees with various flavors or origins. Even a single consumer commonly has a range of preferences depending on time of day or other variables. If a family's or individual's range of coffee preferences could not be met by one brand of single-serve brewer, they would pick a different brand, or might reject the single-serve concept as a whole and instead fall back on traditional drip-brew technology. The fluted filter invention was thus vital to Keurig's success in its two marketplace battles – both (1) to ensure that the single-serve concept took off in the at-home marketplace at all, and (2) to become the go-to brand for single-serve consumers to buy. Range of options, as provided by the fluted filter, was key to both successes. Without it, Keurig couldn't provide extra-bold coffee – which was a growing market trend at the time of the invention, particularly on the West Coast. Without offering that option and others in the range of coffee products its brewers could provide, Keurig simply couldn't compete.

As Keurig itself emphasizes on the brewer boxes:

Everyone's taste in coffee is different. You love dark roast while your spouse prefers light roast. Your best friend drinks decaf, your next-door neighbor drinks tea and the kids want hot cocoa. With over 200 varieties of coffee, tea and hot cocoa to choose from, Keurig® makes it possible for everyone to brew their own perfect cup. Unlike conventional coffee makers, there's no coffee to grind or measure, no coffee pots to clean and no soggy filters to throw away. And forget about going out to an expensive coffee shop. Keurig® is the fastest, easiest, most convenient way to make great tasting coffee, tea or hot cocoa right in your own home.

Originally, Keurig lacked the technology to satisfy “everyone's taste.” This changed with the arrival of the fluted-filter cartridge, which made the entire system more attractive and thus increased Keurig's opportunities to sell both “Extra Bold” and traditional K-Cup portion packs.

The same is true for the office marketplace. Two of Keurig's strongest selling points in AFH channels are that (1) the variety of choices promotes office harmony by enabling everyone to select the brand and flavor that most appeals to him or her and (2) workers are less likely to take long breaks to visit Starbucks or other coffee shops. With the availability of Tully's, Caribou, and other Extra Bold K-Cup portion packs, these selling points became particularly compelling and made it easier for Keurig to secure new AFH business. As that business grew and thus increased the total number of K-Cup portion packs consumed every day, some of those new sales inevitably involved cartridges offering “milder” flavors. Again, this is precisely the point of Keurig's appeal: different people have different tastes. Before the fluted-filter cartridge became available, however, it was not possible for Keurig to satisfy all of those tastes. That in turn made it harder to place Keurig systems in offices at all, notwithstanding that a subset of workers would have been happy with the mild flavors that the older technology could offer. The

availability of the fluted-filter cartridge in turn increased Keurig's access to such customers by making the Keurig system a more compelling alternative to traditional office coffee vending solutions.

The larger serving sizes (i.e., brew volumes) that the fluted-filter cartridge design made practical are yet another reason why K-Cup portion pack sales have been so strong. The original 8 ounce limit posed multiple challenges for Keurig. For one, it was a significantly less than the serving sizes that consumers had come to expect in coffeehouse-type environments such as Starbucks, where the smallest normal size is 12 ounces. It was also much less than what customers could brew themselves at home for lower cost using conventional equipment such as automatic drip machines.¹⁰² That in turn magnified consumers' concerns about the expense of having to buy K-Cup portion packs again and again. Market research indicated that "coffee cost was the biggest barrier to purchase," and in particular that cup size made these "cost per cup perceptions" even more challenging.¹⁰³ Offering the option of larger serving sizes responded to long-running requests¹⁰⁴ and made it more likely that potential customers would perceive K-Cup portion packs to be a reasonable value. Keurig in fact found that the fluted filter K-Cup portion pack was "very successful in attracting/holding new customers" in part because of the ability to provide larger volumes (i.e., 10 ounces or 12 ounces) while maintaining a reasonable taste profile.¹⁰⁵

C. Consideration of Other Possible Reasons for the Commercial Success of Fluted-Filter Cartridges

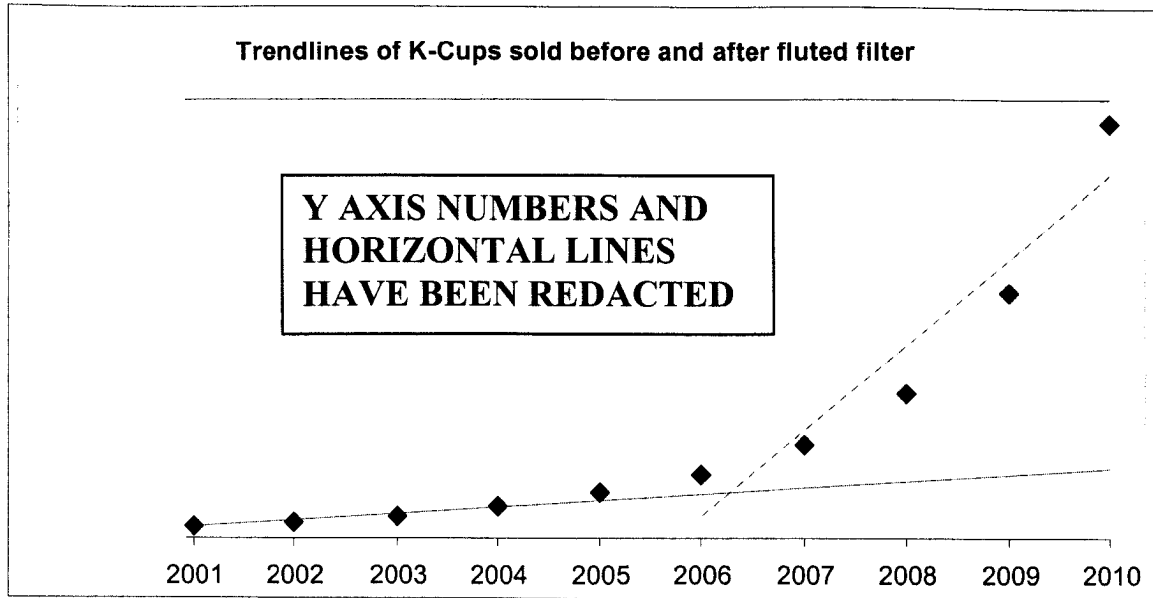
I recognize as a general matter that products may be successful in the marketplace for a variety of reasons, some of which may have little or nothing to do with specific technological improvements above and beyond what is available in existing products. I have considered various such alternative theories here, but none offers a compelling explanation for the success of fluted-filter K-Cup portion packs in the marketplace over and above the trend that one would have expected in 2004 or 2005 based on earlier conical-filter cartridge sales:

¹⁰² Keurig – Tassimo Focus Group (May 2005, Godfrey Research) (K001142-66), p. 6 (reporting that "most respondents drank more than one cup in their morning routine" and also that many appeared to use "larger than 8 ounce cups").

¹⁰³ Keurig – Tassimo Focus Group (May 2005, Godfrey Research) (K001142-66), p. 24.

¹⁰⁴ E.g., April 2005 Customer Satisfaction Survey (K033128-32), p. 3; October 2005 Customer Satisfaction Survey (K033151-57), p. 3.

¹⁰⁵ Keurig Update: Presentation to UCC, July 13, 2006 (K028328-54), p. 9.



Indeed, actual K-Cup portion pack sales in the years following the introduction of the fluted filter far exceeded even Keurig's expectations. In 2005, Keurig forecasted that roughly 1.6 billion K-Cup portion packs would be sold in 2010¹⁰⁶ – less than half of the actual number (approximately 3.3 billion).¹⁰⁷

For example, products sometimes are successful because of a seller's pre-existing place in the market. A new drink from Coke or Pepsi might quickly achieve success, but primarily on the strength of name recognition and/or the seller's existing relationship with grocers. Here, however, pre-existing awareness of Keurig among consumers was "near zero" even as of 2005.¹⁰⁸ Without the fluted filter technology, Keurig's "at home" business would in all likelihood have remained at best a niche market largely limited to customers having personal experience with Keurig technology in "away from home" channels.

Products also sometimes succeed at least for a time primarily on the strength of aggressive marketing campaigns. Here again, however, Keurig initially found itself competing in the AH marketplace alongside much deeper pockets such as Kraft, Mars, and Sara Lee.¹⁰⁹ Shortly after acquiring Keurig in 2006, for example, Green Mountain itself warned investors that many "competitors in the single-cup brewer market have substantially greater financial,

¹⁰⁶ Keurig Business Plan NP 2006-2010 (K106041-95) at K106044.

¹⁰⁷ K001203.

¹⁰⁸ Keurig – Tassimo Focus Group (May 2005, Godfrey Research) (K001142-66), p. 6. See also p. 15 (reporting that "Keurig was unknown").

¹⁰⁹ Green Mountain Coffee Roasters, Inc. Form 10-K – December 13, 2007 (K104051-134), p. 8. While this advertising spending by competitors may have helped Keurig to some extent simply by educating customers about the single-serve coffee category, it certainly does not explain why Keurig ultimately achieved much more success than the companies actually doing the advertising.

marketing and operating resources.”¹¹⁰ In fact, Kraft was spending an estimated \$20 million marketing its competing “Tassimo” brewers at retail, as compared to Keurig’s \$1 million.¹¹¹ Despite this difference in advertising expenditures and the associated practical consequences (e.g., the fact that Kraft conducted far more demonstrations than Keurig),¹¹² however, Keurig still sold approximately 1 brewer for every 2 of Kraft’s in 2005.¹¹³ In other words, Tassimo was not selling “at the rates that one would expect given their marketing spending.”¹¹⁴ As more time passed, moreover, Keurig became the marketplace leader despite Kraft’s enormous resources. While some degree of advertising may be necessary for commercial success in the single-serve beverage industry, it certainly is not sufficient.

Nor does it appear that Keurig’s fluted-filter succeeded simply because of some sort of pent-up demand for single-serve coffee offerings. An August 2004 survey by NPD Houseworld reported only tepid interest from customers and concluded that single-serve products were “no threat” to conventional drip machines.¹¹⁵ This prediction – made shortly before Keurig’s own launch in the AH retail market – proved completely wrong. Single-cup products accounted for almost half of total U.S. coffeemaker sales by the fourth quarter of 2010, and Keurig/Green Mountain is the acknowledged marketplace leader within the single-serve segment.¹¹⁶ This marks a dramatic change from 2004, when single-serve machines constituted less than 5% of total coffeemaker sales.¹¹⁷ Yet various companies have failed in the single-serve marketplace even while Keurig has succeeded. As those failures confirm, the challenge was not simply to bring a single-serve platform to market with adequate financing, distribution channels, marketing know-how, etc. Platforms such as Senseo and Tassimo had far greater marketing budgets, resources, corporate backing, and name recognition than Keurig by 2004. Yet Keurig has become the clear marketplace leader in the single-serve segment after solving a much more central challenge: developing technology capable of brewing beverages that today’s demanding customers would actually want to drink. As discussed above, the fluted-filter cartridge played a critical role in making such beverages possible.

¹¹⁰ Id.

¹¹¹ Board of Directors Update 11-17-05, At Home Division (K014295-99) at K014295.

¹¹² Id.

¹¹³ Board of Directors Update 12-8-05, At Home Division (K014292-94) at K014292.

¹¹⁴ 12/3/05 memo re Brewer and K-Cup Trends and Outlook (K001716).

¹¹⁵ *NPD Survey: Pod Brewers No Threat to Drip Machines*, Home Furnishing News, Aug. 2, 2004 (K001169).

¹¹⁶ Lauren DeSanto, *As Green Mountain’s Business Grows on Starbucks Deal, Coffee Holding Benefits; Shares Undervalued*, Toronto Star, Mar. 14, 2011 (K104531).

¹¹⁷ Jessica Goldbogen Harlan, *Things Appear to Be Perking Up*, Home Furnishing News, Jan. 30, 2006 (K001172).

I also considered but rejected the possibility that Keurig's success with the fluted-filter cartridge simply arose from the popularity of Keurig's brewers. Without K-Cup portion packs, the brewers would serve no purpose at all. Furthermore, as discussed above, it is the wide variety of available K-Cup portion pack choices that make Keurig's brewers so appealing. Without the fluted-filter cartridge, however, the number of choices would be significantly diminished, and the brewers thus much less popular. This is yet another reason for my conclusion that the benefits of the fluted-filter technology played a major role in Keurig's commercial success.

I declare under penalty of perjury that the statements made in the above report are true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "John L. Stanton". The signature is fluid and cursive, with the first name "John" being the most prominent.

Dated: July 8, 2011

Professor John Stanton

EXHIBIT 1

JOHN L. STANTON, JR.

BIOGRAPHICAL INFORMATION

Date of Birth: August 4, 1945
Place of Birth: New Jersey
Citizenship: U.S.A.

EDUCATION

Syracuse University, School of Management, Ph.D., August 1973
Major Academic Areas: Marketing, Statistics and Quantitative Methods, Social Psychology
Dissertation: **An Empirical Study of a Distance Model of Brand Attitude**

State University of New York at Syracuse, BS, June 1968
Major Academic Area: Engineering

EMPLOYMENT

6/08- Chairman and Professor of Food Marketing, Department of Food Marketing, Saint Joseph's University, Philadelphia, Pennsylvania

6/96-6/08 Professor of Food Marketing, Department of Food Marketing, Saint Joseph's University, Philadelphia, Pennsylvania

6/94 - 5/96 Vice President of Marketing, Melitta North America
In charge of all marketing activities for U.S., Canada, and Central America (on leave from university)

1/85 - 5/94 C. J. McNutt Chair of Food Marketing Research, Department of Food Marketing, Saint Joseph's University, Philadelphia, Pennsylvania

9/83 - 3/85 Director, Marketing Research, Weightman Advertising, Inc., Philadelphia, Pennsylvania

6/83 - 9/83 Senior Fulbright Lecturer, University of Dar es Salaam, Tanzania

9/81 - 12/84 Director, Institute for Research in Food Consumption and Nutrition; Associate Professor of Marketing, Temple University, Philadelphia, Pennsylvania

7/80 - 9/81 Associate Professor of Marketing, Temple University, Philadelphia, Pennsylvania

- 6/78 - 7/80 Associate Professor and Chairman of Marketing Department, Temple University, Philadelphia, Pennsylvania
- 7/76 - 6/78 Director, Ph.D. Program in Business Administration; Assistant Professor of Marketing, Temple University, Philadelphia, Pennsylvania
- 6/77 - 3/78 Visiting Professor, Federal University of Rio de Janeiro, Brazil
- 7/73 - 6/76 Assistant Professor of Marketing, School of Business Administration, Temple University, Philadelphia, Pennsylvania
- 1/73 - 9/73 Statistical Programmer, Systems Analyst, Psychological Research Center, Syracuse University
- 9/70 - 6/73 Instructor, Department of Management, School of Management, Syracuse University
- 6/68 - 9/70 Programmer Analyst, State University of New York at Syracuse

AWARDS, FELLOWSHIPS, GRANTS, BOARDS

USDA, Specialty Crop Research Award, ~ \$375,000

Gerald Peck Fellowship for research in the food industry, 2004-2006.

Tengelmann Teaching and Research Award, Excellence in research and teaching, 2004

Member, European Retail Association, Koln, Germany 2004-current

Board member, Consumer Trends Forum (previously Home Economists in Business) 2002-continuing

Board of Directors, Frankford Candy Company, Philadelphia PA 2008-continuing

Board of Directors, Herr's Foods, Nottingham PA 2002-continuing

Board of Directors, Pennsylvania Dairy Stakeholders, 2007- continuing

Chairman, Board of Quality Assurance, Cargills Food Retail/Marketing Educational Institute, Colombo, Sri Lanka 2005-

Board of Quality Management for the Food and Agribusiness Masters Degree Program, Hochschule Anhalt, Germany 2001-continuing

Research Award, National Cattlemen Association, Audit international beef advertising and promotion activities.

Research Award Mushroom Council for the creation of strategies to overcome consumer purchase obstacles, 2003 and 2004.

Research Award Florida Department of Citrus for the development of a marketing strategy for fresh grapefruit, 2002.

Research Award Florida Department of Citrus for investigation into the relationship of citrus consumption and health outcomes using US government data. July 1998.

Contract from an Estonian Investment Bank to create a supermarket chain throughout the Baltics, and Western Russia. Involved in every aspect of business creation from site location to training employees. 1997

Keynote Speaker for Republic of China's "Celebration of Excellence" (Taiwan's National equivalent of the Baldrige Awards), 1995, with Robert Linneman.

Outstanding Teaching Award (1990) and **Outstanding Research Award** (1989), Saint Joseph's University

Sabbatical Award (1992) Saint Joseph's University, Developing marketing strategy for Tengelmann, Inc., the world's largest food retailer. Lived and worked for nine months in Germany.

Invited Speaker, U.S. Agency for International Development (USAID), Antananarivo, Madagascar (March 1989)

Judge: Admark Competition for Excellence in Food Advertising, Food Distributors International, (previously National Association of Wholesale Grocers of America) Washington, DC, 1989 to present.

Judge: Advertising and promotional excellence in foodservice sponsored by Institutional Foodservice Distributors Inc. Washington DC 1999 to present.

USDA contract to reconcile large scale government food consumption studies to other studies such as A.C. Nielsen, SAMI, and Market Research Corporation of America, 1980. Amount: \$160,000/one year. Research contracts for multiple years from Kellogg, Campbell Soup Company, Frito Lay, Procter & Gamble, and many others

U.S. International Communication Agency Speaking Tour Award. Visited Kenya, Tanzania, Senegal, Brazil and Yugoslavia, 1978-79

Research and Study Leave: Temple University, traveled to Brazil to co-research Brazilian consumer, 1977

Grant-in-Aid of Research: Temple University, investigated efficacy of models of brand preference (co-recipient), 1974

JOURNAL EDITORSHIP

Editorial Board, World Journal of Retail Management, Leeds Metropolitan University, 2006- present

Editor - Journal of Food Products Marketing - 1994-present

Review Editor - British Journal of Food Marketing - 1993-2003

Contributing Editor- *Food Processing* magazine 2002-2005

TEACHING ACTIVITIES

Have taught most marketing and food marketing courses in the curriculum, but specialize in strategy and marketing research.

Rated the highest among all MS Food Marketing faculty for many academic years.
Awarded Outstanding Teaching Award, 1990.

Have worked with PhD, Masters, and BS students. Have been major professor on numerous dissertations.

Created the Masters Degree programs in Food and Pharmaceutical marketing.

Created the Food Marketing International Study Tour Program.

Presented numerous speeches and seminars for food companies including the Institutional Foodservice Association, Food Marketing Institute (FMI), National Grocers Association (NGA), National American Wholesale Grocers Association (now FDI), National Confectioners Association, National Frozen Pizza Institute, International Food and Agribusiness Management Association, National Pasta Association, Ohio Grocers Association, North American Meat Processors Association, Processed Apples Institute, Retail Bakers of America, Snack Food Association, Produce Marketing Association, Peanut and Tree Nut Association, New England Grocery Marketing Association, Calories Control Council, Oklahoma Grocers Association, Tennessee Grocers Association, Specialty Food Association, Mid-America Food Processors, American Bakers

Association, Oregon Grocers Association, International Food Technologists, Specialty Coffee Association, Single Serving Food Association, Schnucks, Copps, Affiliated Food Stores, Associated Wholesalers Inc., Fleming Inc., Wakefern, Spartan, Seneca Juice, Clemens, Kings, A&P, Roche Brothers, Frito Lay, Del Monte, 3M and many others.

International Speeches and seminars include Russia (Russian Fruit Juice Federation) Germany (Tengelmann, European Fruit Juice Association), France (Monoprix), Argentina (Argentine Grocery Association, Denmark(AC Nielsen conference), Uruguay (Agri-business Congress), Brazil (ABRAS, APAS, HSM World Marketing Seminars), Italy (Duesche Bank Venice conference), Poland (Posnan university program), Thailand (Fresh Food Association), Norway (AC Nielsen conference), Chile (Chilean Grocers Association), Sweden (AC Nielsen conference), Colombian (Colombia Grocers Association and Seminarium) , Costa Rica (IICA),New Zealand (Food and Beverage Association), Finland(AC Nielsen conference), Mexico (Mexican Grocers Association) and Ireland (Northern Irish Food and Beverage Assoc., Musgrave), Czech Republic (USDA Food Show), and Estonia (Talinvest, US Embassy).

RESEARCH CONTRIBUTIONS

Monographs and Books:

Winning Marketing Strategy: the Rules Raphel Publishing, 2009

Precision Target Marketing, Raphel Publishing, 2009

MORE Stanton on Food Marketing, Fidler Doubleday , 2004.

Delightful Customer Service: 12 Steps to a Better bottom Line Rhetoric to Results SLC Associates 2005

Running a Supermarket Consumer Focus Groups, SLC Publishing, New Jersey, 2002

Stanton on Food Marketing, Putman Publications, Itasca, IL, 2001.

Delighting the EPA Customer: A handbook for success, United States Environmental Protection Agency, Government Printing Office, Washington DC 2000. Co-authored

Marketing Planning in a Total Quality Environment, Jaico Publishing House, Calcutta, India, 2000, with Robert Linneman.

El Marketing de las empresas de la industria alimenticia en el siglo XXI, HSM Seminarios Internacionales, Buenos Aires, Argentina. The monograph 236 pages in both English and Spanish, and presents the major contemporary issues in Food Marketing worldwide.

21 Trends in Food Marketing for the 21st Century, Raphel Publications, 1997.

Success Leaves Clues!, Revised Edition, Silver Lake Publishing, 1998.

Marketing Planning in a Total Quality Environment (in Korean), 1997, with Robert Linneman

325 Ways to Make Customers Feel Like Your Supermarket is Their Supermarket, Raphel Publications, 1996, with Robert Linneman

Marketing Planning in a Total Quality Environment, Haworth Press, 1996, with Robert Linneman

Making Niche Marketing Work. McGraw-Hill, New York, (1991). Co-authored. Also published in *Thai, Korean, and Hebrew* (Triwaks Enterprises/Matat Publishing House, Tel Aviv)

Delight Me ... The Ten Commandments of Customer Service, Raphel Publications, 1996.

Success Leaves Clues!, First Edition, SLC Associates, 1994,

Marketing De Nichos-Una Estrategia Vencedora, MAKRON Books Do Brazil Etidora Ltda. Sao Paulo, (1993)

Nischen-Marketing, Campus Verlag GmbH, Frankfurt, Germany (1992)

Marketing Research: A Brand Management Approach, Saint Joseph's University Press, Philadelphia, PA (January 1989) with Joseph Eastlack

Deli Sales Strategies, International Dairy Deli Association, Madison, WI (August 1988) with Patrick Kirschling

Chapter in Books

Mining for Niches, Part 2 Business Strategy Formulation, Section 10 in *Readings in Strategic Marketing*, Arthur A. Thompson, A.J. Strickland, and Tracy Kramer, (McGraw Hill), 1998

A Research Program for Evaluating Concepts for New Mushroom Products, (with Louis Tucci) in *Science and Cultivation of Edible and Medicinal Mushrooms* edited by C.P. Romaine, C.B. Keil, D.L. Rinker and D.J. Royce (Pennsylvania University Press) 2004.

Anticipating and Predicting Sustainable Future Trends through Actionable Techniques in *Capitalizing on Sustainable Consumer Trends to Launch Food and Beverage Products which Thrive in Saturated Categories*, Lunn and Riseborough (editors), Centaur Publishing, London (2004)

Video and Audio Recordings

Revitalizing the Center of the Store, Educational Programs Food Marketing Institute, Annual Convention, Chicago, May 2000.

Turning Food Trends into Food Profits, 44th Summer NASFT Fancy Food Show, New York, July 1998.

Consumer Trends That Can Make or Break You, Keynote Address, Retailer's Bakery Association Market Place Convention, Anaheim, CA May 1998.

21 Trends facing the Food Industry, Convention Keynotes, NGA Annual Convention Audio cassette series, National Grocers Association, Reston, VA, 1998, co-authored.

Turning Customer Service into Customer Delight, NGA Annual Convention Audio cassette series, National Grocers Association, Reston, VA, 1998, co-authored

Making Niche Marketing Work, McGraw-Hill, New York, (1991)

The Intrapreneur & Entrepreneur, produced by InfoMediz, The American Dietetic Association, recorded in Atlanta, GA (October 1987)

Interactive Video Kiosks Hoke Communications, Inc., Garden City, NY (February 1987)

Video Kiosk to Change Marketing, Ideas in Sound, Hoke Communications, Inc., Garden City, NY (December 1986)

Articles and Proceedings: Refereed

1. Stanton, John, James Wiley, and Ferdinand Wirth "Who Are The Locavores?" Journal of Consumer Marketing, Volume 28, Winter '11.
2. Tucci, Stanton and Baglione Self-reported Nutritional Knowledge and the Acceptance of Health Related Food Benefit Claims, , British Food Journal to Appear in 2011
3. Stanton and Meloche, Private label growth: Quantitiation of Influencing variables, 8th CIRCLE conference, Dubravonik, April 2011 (abstract) page 64 ISBN 978-053-6025-40-4

4. Stanton, John, James Wiley, and Ferdinand Wirth, Proceedings Academy Australian and New Zealand (ANZMAC)Conference 2010 ISBN for Proceedings
5. Wirth, Ferdinand F., John L. Stanton and James B. Wiley. 2011. "The Relative Importance of Search versus Credence Product Attributes: Organic and Locally Grown." *Agricultural and Resource Economics Review*, 40(1): 1–10 (In press)
6. Stanton, Wirth, and Wiley "Who Are The Locavores?" The Journal of Consumer Marketing, Volume 28, Winter '11.
7. Lang Mark, , John Stanton, Richard Lancioni, Kenny Herbst, *The Role of Hedonistic and Emotional Response in Food Shopping*, 17th INTERNATIONAL CONFERENCE on Recent Advances in Retailing and Consumer Services Science, July 2010
8. Stanton, John and Martin S. Meloche. "Comparison of Distilled Spirit Consumption Patterns in the United Kingdom and the United States: A Syndicated Data Approach" in Worldwide Hospitality and Tourism Themes. Vol II #3 2009
9. Herbst, K. C., Stanton, J. L., Amodeo, C. M., and Costello, A. T. The interplay of trust, shopping frequency, and service as predictors of private label purchase. 2007 Vol 1 , *World Journal of Retail Business Management*
10. Changes in family dynamics predict purchase and consumption *British Food Journal*, Herbst, K. C., and Stanton, J. L. Vol 109 issue 8 2007 pp648-655.
11. Herbst, K. C., Stanton, J. L., and Armstrong, G. A. (2006). Don't be fooled: Profits result from being innovative and meeting consumers' need for convenience. *Innovative Marketing*, 2, 23-28.
12. Stanton, J. L., and Herbst, K. C. (2006). Slotting allowances: Short-term gains and long-term negative effects on retailers and consumers. *International Journal of Retail and Distribution Management*, 34, 187-197.
13. Stanton, J. L., and Herbst, K. C. (2006). The effects of current market forces on the impact of a TV commercial in creating persuasion: Advertising agencies cannot do it all alone! *Journal of Promotion Management*, 12, 119-135.
14. Stanton, J. L., and Herbst, K. C. Commodities must begin to act like branded companies: Some perspectives from the United States. *Journal of Marketing Management*. Volume 21, Special Issue 1-2, pages 7-18.

15. Age-related differences in advertising: Recall and Persuasion, *Journal of Targeting, Measurement and Analysis in Marketing*, 2004, Volume 12 No. 1, pp7-20.
16. A Research Program for Evaluating Concepts for New Mushroom Products , ISMS XVIth International Congress, Miami, FL April, 2004. Proceedings
17. Las Nuevas Corritas de Publicidad, Innovadores, *The Seminarium letter*, Number 12 Marzo/Abril 2004 p. 10 Quito Ecuador
18. Comparative Persuasive Effectiveness of Executional Elements in TV Food for 15 second and 30 second Commercials, *Journal of International Food and Agribusiness Marketing* , Volume 15, Nos. 1 & 2
19. An approach to Model, Estimate, and Control the Effects of Ambient Temperature on Advertising Experiments, *Journal of Food Products Marketing*, Volume 7 number 1/2.
20. Know the Market: Latin American Retail Environment, *Journal of Food Product Marketing*, Volume 6, number 4.
21. "Food Product Marketing," *Encyclopedia of Food Science and Technology 2nd edition*, Y. Hui, editor, John Wiley and Sons, New York, 1999, co-authored.
22. "Ejercit e sus Musculos" *Gestion*, May 1999. Gestion means Management is Spanish and is published in cooperation with the Harvard Business Review. It was written in English by John L. Stanton and translated into Spanish.
23. Comparative Effectiveness of Executional Elements in TV Advertising: 15 versus 30-second Commercials, *Journal of Advertising Research*, with Jeff Burke November/December 1998.
24. "Downsizing Takes Toll on Brands", *Journal of Marketing Management*, Spring/Summer 1998.
25. The Food for Health Business: Opportunities and Pitfalls, *Journal of Food Products Marketing*, Vol.5 No. 3, pp. 3-7.
26. Niche Marketing Programs, *Journal of the Association of Marketing Educators*, Winter/Spring, 1998. pp.
27. "Employed Wives and Convenience Food: A Review and Re-Examination," *Business Journal* (University of Southern Connecticut), 1997, co-authored
28. "Consumption of Sugars," *Supplement to the American Journal of Clinical Nutrition*, 1995, co-authored

29. Zabojsy Marek (Killing Brands)," in *Serwis Marketing* (Polish publication), Luty, 1996
30. "A Game Plan for Regional Marketing," *Journal of Business Strategy*, Nov/Dec (1992). Co-authored.
31. "Mining for Niches," *Business Horizons*, May/June (1992). Co-authored.
32. "Food Product Marketing," *Encyclopedia of Food Science and Technology*, Y. Hui, editor, John Wiley and Sons, New York, 1991, co-authored.
33. "Serum Cholesterol, Fat Intake and Breakfast Consumption in the United States Adult Population," *Journal of the American College of Nutrition*, Vol. 8, No. 6 (1989). Co-authored.
34. "Health Claims: A Further Discussion," *Journal of Nutrition Education*, Vol. 21, No. 1 (February 1989), co-authored.
35. "The Bandwagon Isn't Moving ...Yet" *Journal of Advertising Research*, Vol. 28, No. 2 (April/May 1988), Co-authored.
36. "Health Claims in Food Advertising: Is There a Bandwagon Effect?," *Journal of Advertising Research*, Vol. 27, No. 2 (April/May 1987) Co-authored.
37. "Pattern Analysis in Nutrition: A Review," *Clinical Nutrition*, Volume 5 (November/December 1986) pp. 249-253, Co-authored
38. "Obesity and Caloric Intake: The National Health and Nutrition Examination Survey of 1971-1975 (HANES I)," *Journal of Chronic Disease*, Vol. 38, No. 9 (1985) pp. 727-732, Co-authored
39. "Blood Pressure and Nutrient Intake in the United States," *Nutrition Today* (July/August 1984) pp. 14-23. Co-authored
40. "Blood Pressure and Nutrient Intake in the US," *Science*, Vol. 224 (June 29, 1984) pp. 1392-1398, Co-authored
41. "Evaluating Retail Trade Areas for Convenience Stores" *Journal of Retailing*, Vol. 60, No. 1 (Spring 1984) pp. 124-136, Co-authored
42. "Application in Practice: A Researcher's Point of View," *Journal of Dietetic Software*, Vol. 1, No. 1, (Winter 1983-1984) p. 5

43. "Obesity and Caloric Intake: The National Health and Nutrition Examination Survey of 1971-1975 (HANES I)," *Journal of Chronic Disease*, Vol. 38, No. 9 (1985) pp. 727-732, Co-authored
44. "Application in Practice: A Researcher's Point of View," *Journal of Dietetic Software*, Vol. 1, No. 1, (Winter 1983-1984) p. 5 "Assessment of Nutritional Correlates of Blood Pressure Regulations" *Annals of Internal Medicine*, 98 Part 2: 715-719 (1983), Co-authored
45. "Using Multiple Scenarios for Strategic Environmental Assessment: Implications for Marketing Management," *Marketing Intelligence & Planning*, Vol. 1, No. 1 (1983) Co-authored
46. "Problem in Marketing Research in Latin America," *Journal of Marketing Research Society* (Winter 1982), Co-authored
47. "Reply to Letter by Schardt and Jones" *American Journal of Clinical Nutrition* (35: June 1982) pp. 1498-1500, co-authored
48. "The Measurement of Consumption: The Comparison of Surveys and Diaries," *Journal of Marketing Research*, (May 1982), Co-authored
49. "Demographic, Dietary, Lifestyle, and Anthropometric Correlates of Blood Pressure," *Hypertension*, H82-319R (September/October 1982), Co-authored
50. "Authors Rebut "Soup and Health" Nutrition Summary," *Journal of Nutrition Education*, (14: March 1982), pp. 10-11
51. "A Quantitative Rationale for the Ingestion of a Minimal Health-Maintenance Ratio of Polyunsaturated/Saturated Fatty Acids," *American Journal of Pharmacy*, Vol. 154, No. 2 (April/June 1982), Co-authored
52. "Food, Eating Patterns, and Health," *American Journal of Clinical Nutrition*, (December 1981), Co-authored
53. "Reply to Dr. Lowenstein," *American Journal of Clinical Nutrition*, (December 1981) Co-authored
54. "Reply to Dr. Chen," *American Journal of Clinical Nutrition*, (December 1981) Co-authored
55. "How has the Quantity and Quality of the American Diet Changed During the Past Decade?" *Food Technology*, Vol. 35:9, pp. 50-57 (September 1981), Co-authored

56. "Food Eating Patterns and Health: A Re-examination of the TEN STATE and HANES I Surveys," *American Journal of Clinical Nutrition*, Vol. 34, pp. 568-580 (April 1981), Co-authored
57. "Psychology of Brand Preference," Published in *Readings in Psychology*, Steven Gilbert (editor), Genn Publishing, Lexington, MA (July, 1980)
58. "Product Safety, The Role of Advertising," *Journal of Advertising*, Vol. 7 (March 1979), Co-authored
59. "Replication of a Choice Model," *Decision Sciences*, Vol. 9 (January 1978) pp. 120-128, Co-authored
60. "Perceptual Mapping of Consumer Products and Television Shows," *Journal of Advertising*, Vol. 6, No. 2 (Spring 1977) pp. 16-22, Co-authored
61. "CHOICE: A Program to Derive the Parameters of the Davidson Extension of the Bradley-Terry Model" *Journal of Marketing Research*, Vol. XIII (November 1976) pp. 409-410, Co-authored
62. "Forecasting Competitive Advertising Using Simple Time Series Models," *Journal of Advertising Research*, Vol. 16 (April 1976) pp. 37-42, Co-authored
63. "Psychological Need/Product Attribute Approaches for Television Programming," *Journal of Advertising*, Vol. 5 (Spring 1976) pp. 19-24, Co-authored
64. "Personality as Influencing Factor in Decision Making," *Organizational Behavior and Human Performance*, Vol. 15 (1976), pp. 241-257
65. "Perceptual Mapping of Consumer Product and Television Shows," *Journal of Organization and Human Performance*, Vol. 15 (1975) pp. 241-257, Co-authored
66. "A Congruence Model of Brand Preference: A Theoretical and Empirical Study," *Journal of Marketing Research*, Vol. 11 (November 1974) p. 427, Co-authored

Articles: non- Refereed

Tomorrows Retailers and Target Marketing, **The Chartered Marketer**, July 2007 Issue 6, Page 17-19.

Marketing 101: the final Chapter, **Food Processing**, December 2005 page 21.

A China Sized market ...right here, **Food Processing**, October 2005 page 25

In-store is prime time, *Food Processing*, September 2005, page 33

Build Brands, don't kill them, *Food Processing*, August 2005, page 31

The first pyramid never worked, *Food Processing*, June 2005, page 37

Do you really understand food?, *Food Processing*, April 2005, page 22

Make Time for Continuing Education, *Food Processing*, March 2005, page 24

Obesity: Take the Offense , *Food Processing*, January 2005, page 24

Doing Business with Wal-Mart, *Food Processing*, December, 2004, page 19

Look for base hits, too, *Food Processing*, October 2004, page 26

Tudo pelo delite do consumidor, **Fohla Top of Mind**, Folha de Sao Paulo, 2004

Death of the mass market , *Food Processing*, September 2004, page 25

Learning from the 'Restaurant,' *Food Processing*, August 2004, page 24

Take your share of this small world, *Food Processing*, July 2004, page 26

The end of TV advertising *Food Processing*, June 2004, page 26

"Shelf Warmer " *Food Processing*, May 2004, page 22

The Convenience Audit: Live up to the Name Convenience Store, **NACS Magazine**, May, 2004 pg 14.

"An MBA is not enough," *Food Processing*, April 2004, page 30

"While the Getting is good," *Food Processing*, February 2004, page 22

"Labeling dilemma," *Food Processing*, January 2004, page 22

"Why products fail," *Food Processing*, December 2003, page 18

What Price Success?, *Food Processing*, October 2003, page 24

Robbing Peter to pay Paul, *Food Processing*, September 2003, page 26

Four Steps to Increased Sales and Profits From the Center Store, National Grocers Web site article, Winter 2003.

Riches in Niches, *Food Processing*, August 2003, page 20.

Staying the most convenient Store in Town, *NACS Magazine*, September 2003, pp 6-8.

Most Pioneers got killed but some got rich, *Food Processing*, July 2003, page 22.

It's all in the execution *Food Processing*, June 2003, page 14.

Remembering the Basics, *Liberty Richter Viewpoints*, Summer 2003, page 4

Is your Web site being wasted, *Food Processing*, May 2003, page 24.

Adding and Defining Value, www.extraordinarydairy.com, Dairy management Inc., Chicago IL, April, 2003.

Trends: Real or Imagined, *Food Processing*, January, 2003, page 20.

"Best Practices in Business Intelligence & Analysis" *Retail Executive Digest*, April 2003 page 15.

Mission, vision, strategy, or tactic?, *Food Processing*, April, 2003, page 26.

Seeking Success, www.extraordinarydairy.com, Dairy management Inc., Chicago IL, December, 2002.

Sneak the message to consumers, *Food Processing*, December, 2002, page 20.

Break down barriers to bigger and better ideas, www.extraordinarydairy.com, Dairy management Inc., Chicago IL, November, 2002.

Here comes another paradigm breaker, *Food Processing*, November, 2002, page 22.

Respond to Change Now, www.extraordinarydairy.com, Dairy management Inc., Chicago IL, September, 2002.

Refocus on Building trust, *Food Processing*, October, 2002, page 22.

Growth! www.extraordinarydairy.com, Dairy management Inc., Chicago IL, August, 2002.

Families that eat together...A look at the emotional side of food, *Food Processing*, August, 2002, page 28.

Get consumer to buy more of your ...by making it easier to find and easier to use, www.extraordinarydairy.com, Dairy management Inc., Chicago IL, July, 2002.

Learning from past mistakes, *Food Processing*, June, 2002, page 30.

Nutraceutical dilemma, *Food Processing*, May, 2002, page 22

Take care of yourself and other things I learned from the Enron Scandal, *Food Processing*, April, 2002, page 18.

Advertising the Message, *New Directions in Advertising: Marketing the Retail Store as a Brand*, Food Marketing Institute (Washington DC) 2002, pp 27-28.

Blinded by Paradigms, *Food Processing*, March 2002. pg 24.

Issues of sales accountability, *Food Processing*, February 2002. pg 20.

Getting back to basics: Food marketing Do's and Don'ts, *Food Processing*, December 2001, pp. 22-24

Suppliers are experts on their products: But do they know what their customers' customers want? *Food Processing*, November 2001, pp. 26-28

If you want loyalty...buy a dog, *Food Processing*, October 2001 pp. 25-26

Alphabet food marketing, *Food Processing*, September 2001, pp. 30-31

Testimony from an Expert Witness, *Food Processing*, August 2001, pp.22-24

Do you remember CRM? *Food Processing*, July 2001, pp.20-22

Is organic really safer?, *Food Processing*, June 2001, pp.52-54

You can't have one without the other, *Food Processing*, May 2001, pp.54-55.

Marketing or Sales? Which are you?, *Fruit Processing*, April 2001, pp. 48-51.

Profits: Where's the beef? , *Food Processing*, April 2001, pp.22-23

Who'll be selling your products in the future?, *Food Processing*, March 2001, pp.26-27.

No Such Thing as a Free Lunch, *Food Processing*, January 2001, pp.31-33.

Event marketing with a Twist, *Food Processing*, December 2000, pp.26-28.

Meal Solutions That Are Building Sales in Center Store, *National Grocer*, Winter 2000, Volume 15, No. 4, pp12-18.

Where are all the Women, *Food Processing*, November 2000, pp.34-36.

Are You Selling Brands or Solving Problems, *Food Processing*, October 2000, pp.37-39.

Look to the Center of the Store to increase sales and profits, *BrandCities.com*, November 2000

What is an MBA really worth?, *Food Processing*, September 2000, pp.28-30.

Mega –retailers not all they’re stacked up to be, *Food Processing*, August 2000, pp.34-35.

Benchmarking Redefined: Looking beyond the CPG Industry to Get Ahead, *BrandCities.com*, September 2000.

Why Campbell is in the Soup, *Food Processing*, July 2000, pp.30-32.

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Four Steps to Increased Sales and Profits from Center Store, *National Grocer*, Volume 15, No. 2, Spring, 2000.

Delighting the Customer Pays Off, *Food Processing*, May 2000, pp. 68-70.

You say it, I Pay it, *Food Processing*, April 2000, pp.30-32.

The World of Percentages: Focusing in on qualitative vs. quantitative data, *Food Processing*, March 2000, pp.36-38.

Handel und Industrie im 3. Jahrtausend, Unternehmerkongress 2000, BFS, 21-22 February 2000, page 16-20

Benchmarking redefined: Looking outside the food Industry can help make it more meaningful, *Food Processing*, February 2000, pp.29-30

Analyzing failed forecasts, One Lesson: The future belongs to the proactive, *Food Processing*, January 2000, pp.32-33.

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Hispanic Opportunities: Too many marketers aren’t making a real effort to target this growing segment, *Food Processing*, December1999, pp.30-31.

Now is the Time to go Global Marketing, *Food Processing*, November 1999, pp. 50-52.

Offer Meal Conveniences; Not Meal Replacement, *National Grocer*, Vol. 14, #4, Fall 1999, pp. 8-12.

Partnering pretenses, *Food Processing*, October 1999, pp. 54-56.

Keeping the Consumer in Mind: Why the traditional brand management approach is due for an overhaul, ***Food Processing***, September 1999, pp. 42-44.

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